

In re) Fair Hearing No. 12,010
)
Appeal of)

The petitioner appeals a decision of the Department of Social Welfare terminating her Food Stamp grant based on her husband's income. The issue is whether an annuity payable to the petitioner's husband which has been entirely diverted to pay child support, under a Court order, and a business loan, pursuant to an irrevocable assignment, should be counted as "income" to the husband in order to determine Food Stamp eligibility.

The parties have stipulated that the following facts should be found:

1. Petitioner lives in Sough Royalton, Vermont in a mobile home with her ten-year-old son, [name], and petitioner's husband, [M.L.].

2. Petitioner was married to [M.L.] on February 5, 1993. Neither petitioner nor her husband have been employed throughout the course of their marriage.

3. In 1976, [M.L.] was struck by a Gulf Oil Truck, an accident which resulted in [M.L.] have his right leg amputated below the hip. Pursuant to a settlement with Gulf Oil, an annuity was purchased on [M.L.'s] behalf through the Standard Life Insurance Company. Standard Life Insurance pays regular monthly installments of \$1,249.00. [M.L.'s] life insurance annuity contract does not allow the annuitant the option to foregoing all remaining monthly payments in exchange for the present dollar value of the contract.

4. Six-hundred and fifty dollars of [M.L.'s] annuity payment is paid directly to [M.L.'s] ex-wife, [P.L.], under a 1986 Massachusetts court order for child support and maintenance. The child support order will remain in effect until [P.L.] either remarries or her children turn eighteen years of age.

5. [M.L.] has irrevocably assigned six-hundred and four dollars to the St. Lawrence National Bank as payment for a business loan made in May of 1991. Fifty-seven payments of six-hundred and four dollars are still due and owing on this note.

6. On February 8, 1993, the petitioner notified the Department of Social Welfare that she had married [M.L.].

7. On February 10, 1993, the petitioner and her husband completed an application for Food Stamps. Prior to this time, [P.L.] had been receiving Food Stamps for herself and her son.

8. On March 9, 1993, the Department requested additional information from the petitioner so that the February Food Stamp application could be processed.

9. The information was subsequently provided to the Department and the petitioner's Food Stamp eligibility was recalculated.

10. On April 27, 1993, the petitioner was sent a notice by the Department, advising her that her Food Stamps were being reduced from \$233.00 to \$0.00. The Department notified the petitioner that a reduction was taking place because her household income exceeded the maximum allowable income levels for purposes of the Food Stamp program.

11. The Department calculated the petitioner's household Food Stamp benefits in April as follows:

ANFC benefits	+ \$ 25.00
Unearned Income	+ \$1,249.00
Standard Deduction	- \$ 127.00
Allowed Shelter/Utility	- \$ 83.50
Countable FS Income	= \$1,063.50

12. The Department of Social Welfare calculated petitioner's Food Stamp grant, including as unearned income the \$1,249.00 annuity payment.

13. At the time petitioner filed her appeal on the food stamp issue, she also appealed the amount of her ANFC grant.

14. The parties settled the ANFC case by agreeing that petitioner was eligible for monthly ANFC allotments as follows:

March	\$629.00
April	\$629.00
May	\$649.00
June	\$649.00
July	\$649.00
August	\$629.00
September	\$629.00

15. DSW pail [P.L.] the amounts of ANFC agreed upon for the months of March through September, 1993.

ORDER

The decision of the Department is affirmed.

REASONS

Regulations governing the Food Stamp program require that eligibility be determined based on the income of the entire household unit applying for assistance. F.S.M. § 273.9(a). The regulations specifically require that the spouse of a household member applying for assistance be included in the household if the non-applying spouse lives in the same household. F.S.M. § 273.1 (a)(2)(i)(A). As the petitioner indisputably lives in the same household as his wife and as she has applied for Food Stamps, the Department is required by the above regulations to consider the petitioner a part of the applying household and is required to evaluate his income as well.

The gravamen of the petitioner's complaint is that his income, in the form of an annuity payment, is not countable because he does not actually receive it. Part of the annuity has been diverted by a Court to pay his child support to his first wife and part of the annuity has been diverted by virtue of an irrevocable agreement he made with a creditor to pay off a loan. It is a fact that the petitioner and his current family do not get the annuity payment at present and it is not available to them to help pay their food expenses. The Department argues that the income must still be counted because its own regulations based on federal law and regulation requires that all income be counted if it confers a benefit on the family, regardless of whether it is actually available to pay household expenses.

Income is defined in the Department's regulations in a very broad and inclusive manner; annuities are specifically identified as meeting the definition of income:

Household income shall mean all income from whatever source excluding only items specified in paragraph (c) of this section.

. . .

2. Unearned income shall include, but not be limited to:

. . .

ii Annuities;...

Paragraph (c), as set forth above, lists the only kinds of income which can be excluded and spans some fourteen exclusions detailed over thirteen pages of the regulations. In their arguments, the parties make it clear that the only exclusion which is arguably applicable is the first. The hearing officer's review of the other thirteen exclusions revealed no other potentially applicable exclusion. The first exclusion is complex and involves in-kind and vendor payments. It is set out in its entirety as follows:

1. Any gain or benefit which is not in the form of money payable directly to the household, including nonmonetary or in-kind benefits, such as meals, clothing public housing, or produce from a garden, and vendor payments. In-kind or vendor payments which would normally be excluded as income as specified in this section but are converted in whole or in part to a direct cash payment under the approval of a federally authorized demonstration project (including demonstration projects created by the waive of provisions of Federal law) shall also be excluded from income. Money payments that are not payable directly to a household, but are paid to a third party for a household expense, are vendor payments and are excludable as follows:
 - i. A payment made in money on behalf of a household shall be considered a vendor payment whenever a person or organization outside of the household uses its own funds to make a direct payment to either the household's creditors or a person or organization providing a service to the household. For example, if a relative or friend, who is not a household member, pays the household rent directly to the landlord, the payment is considered a vendor payment and is not counted as income to the household. Similarly, rent or mortgage payments made to landlords or mortgagees by the

Department of Housing and Urban Development (HUD), or by State or local housing authorities, are other examples of vendor payments, and are also excluded. Payments by a government agency to a child care institution to provide day care for a household member are also excluded as vendor payments.

ii. A PA or GA payment which is not made directly to the household, but paid to a third party on behalf of the household to pay a household expense, shall be considered and excludable vendor payment and not counted as income to the household if such PA or GA payment is for:

A Medical assistance;

B Child care assistance;

C Energy Assistance (as defined in paragraph (c)(11) of this section);

D Housing assistance payments made to a third party on behalf of a household residing in temporary housing, if the temporary housing unit provided for the household as a result of such assistance lacks facilities for the preparation and cooking of hot meals or the refrigerated storage of food for home consumption, provided that such vendor payments shall be excluded under this provision if paid to the housing provider during the period beginning October 20, 1987 and ending September 30, 1989; or

E Emergency assistance for a migrant or seasonal farm worker household during the period the household is in the hob stream. This assistance may include, but is not limited to, emergency vendor payments for housing or transportation.

iii. Payments in money that are not made to a third party, but are made directly to the household, are counted as income and are not excluded as a vendor payment.

iv. Moneys that are legally obligated and otherwise payable to the household, but which are diverted by the provider of the payment to a

third party for a household expense, shall be counted as income and not excluded as a vendor payment. The distinction is whether the person or organization making the payment on behalf of a household is using funds that otherwise would have to be paid to the household. Such funds include wages earned by a household member and therefore owed to the household, a public assistance grant to which a household is legally entitled, and support or alimony payments in amounts which legally must be paid to a household member. If an employer, agency, or former spouse who owes these funds to a household diverts them instead to a third party to pay for a household expense, these payments shall still be counted as income to the household. However, if an employer, agency, former spouse, or other person makes payments for household expenses to a third party from funds that are not owed to the household, these payments shall be excluded as vendor payments. The distinction is illustrated by the following examples:

- A. Wages earned by a household member that are garnisheed or diverted by an employer, and paid to a third party for a household's expenses, such as rent, shall be considered as income. However, if the employer pays a household's rent directly to the landlord in addition to paying the household its regular wages, this rent payment shall be excluded as a vendor payment. In addition, if the employer provides housing to an employee, the value of the housing shall not be counted as income.
- B. All or part of a Public Assistance (PA) or General Assistance (GA) grant or payment which is diverted to a third party or to a protective payee for purposes such as, but not limited to, managing a household's expenses, shall be considered income to the household and not excluded as a vendor payment, except as provided for in paragraphs (c)(1)(i) and (c)(1)(ii) of this section.

Assistance financed by State or local funds which is provided over and above the

normal PA or GA grant or payment, or is not normally provided as a part of such grant or payment would be considered emergency or special assistance and excluded as income if profited to a third party on behalf of the household. For example, where a PA or GA program provides all households with school age children with a monthly "extra" children's clothing allowance, paid directly to a clothing store, that allowance would not be excluded because it is part of the regular monthly assistance for all households in that category and is not really an "extra" payment. On the other hand, if a fire destroyed the household's clothing and it receives an "emergency" amount paid directly to a clothing store, such a payment could be excluded under this provision.

Where the program is not composed of various standards, allowances, or components, but is simply designed to provide assistance on an as needed basis rather than provide routine, regular monthly benefits to a client, no exclusion would be granted under this provision. For example, if such a program provides a household with a food voucher to be presented to a store, the value of the voucher is not excluded an emergency or special assistance because it is not provided over and above the normal grant, it is the normal grant.

NOTE: The reminder of 273.9(c)(1)(iv)(B) has been excluded as procedural and not applicable to the Policy Manual.

- C. Money deducted or diverted from a court-ordered support or alimony payment (or other binding written support or alimony agreement) to a third party for a household expense shall be considered as income. However, payments specified by the court order or other legally binding agreement to go directly to the third party rather than to the household, and support payments not required by a court order or other legally binding agreement (including payments in excess of amount

specified in a court order or written agreement) which are paid to a third party rather than the household shall be excluded as a vendor payment, even if the household agrees to the arrangement.

- v. Educational loans on which payment is deferred, grants, scholarships, fellowships, veterans' educational benefits and the like that are provided to a third party on behalf of the household for living expenses such as rent or mortgage, personal clothing or food eaten at home shall be treated as money payable directly to the household and not excluded as a vendor payment.

The petitioner relies on paragraph (1)(iv)(C) in support of her position that the money diverted from her husband's annuity to third parties should not be counted as income to her. The petitioner's reliance on this provision is erroneous, however, because it deals with the diversion of court-ordered support or alimony payments, not annuity payments. The petitioner's husband's annuity is partially paid out in the form of court ordered support to a third party. It is not itself court ordered support which has been diverted to pay the household expenses of third parties.

The provision which does describe the appropriate treatment of the petitioner's husband's annuity is the beginning of paragraph (1)(iv) which states that "moneys that are legally obligated and otherwise payable to the household, but which are diverted by the provider of the payment to a third party for a household expense, shall be counted as income and not excluded as a vendor payment." The annuity payments are moneys that are legally obligated and otherwise

payable to the petitioner's husband but which have been diverted by the annuity company (either by court order or through the husbands' own contractual direction) to his ex-wife to pay child support and to a bank to repay the petitioner's business loan. As such, these payments must be included as income to the household.

The petitioner argues in her memorandum that it is unfair to ascribe this money to her household because it is not actually received. However, the petitioner has adopted an erroneous standard in her focus on "actual receipt." The standard in Food Stamp income cases is whether the household has received a "gain" based on the income, not whether the household has increased purchasing power to buy food. Meyer v. Lynq, 859 F.2d 62 (8th Cir. 1988). In that case, the federal appeals court specifically found that money paid to a farm family which was already encumbered by a lien to repay an operating loan was still countable income for Food Stamp purposes. The Court concluded that "Congress plainly meant in its definition of 'income' to 'cast the broadest possible net, including all forms of what has been found to constitute income.'" Id., at 64. The Court, after reviewing the congressional record, concluded with regard to the exclusions set forth for vendor payments: "Moreover, in discussing an exclusion for certain in-kind and vendor payments, Congress specifically indicated that money payable to a household but diverted to a third party, even by way of a court-ordered

garnishment, would be counted as income." Id., at 65. Here, too the fact that the money owed to the petitioner's husband has been diverted to pay legal debts and/or obligations, does not prevent it from being counted as income. The petitioner's husband "gains" from this income because he has money to use to pay these debts which he would, otherwise, have to pay from other income.

The only "break" the petitioner can get on her Food Stamp benefits is the standard deduction which is available to everyone and which incorporates such expenses as child support payments. F.S.M. § 273.9(d)(1). It cannot be found that the Department erred when it included the petitioner's husband's annuity as countable income to her family. As the family is obviously in a very difficult financial situation, the petitioner's husband might want to investigate whether he can legally renegotiate or extricate himself from his current obligation to pay the entire amount of his income (after child support is paid) in repayment of his business loan.

#